

# EXEMPT ORGANIZATIONS

## INFORMATION MEMO

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### Corporate Transparency Act Exempts Most (but not all) Nonprofits – The 60-Second Download

The Corporate Transparency Act (CTA) now requires the vast majority of corporations, limited liability companies and other entities to report information concerning their beneficial ownership to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN). The purpose of the CTA's reporting requirements is to bring transparency to entity ownership, thereby helping the United States government protect the financial system from being used for illicit activities. Fortunately, most tax-exempt organizations are exempt from the CTA reporting, with a few important exceptions. Read on for the details below.

The CTA exempts 23 different types of entities from compliance with its reporting requirements. The following exemptions are those that will commonly apply to nonprofits and their affiliates:

- **501(c) Organizations:** Organizations described in Section 501(c) of the Internal Revenue Code (Code) are all exempt. This includes the largest and most common group - 501(c)(3) charitable, educational, religious, etc. organizations – as well as other less common types of organizations that are tax exempt under 501(c) such as social welfare organizations, certain types of homeowner's associations, business leagues, and social clubs;
- **Political Organizations:** Political organizations, as defined in Code Section 527(e)(1), that are exempt from tax under Code Section 527(a);
- **Charitable Trusts:** Charitable Trusts and Split-Interest Trusts (i.e., charitable lead and remainder trusts);
- **Wholly-Owned Subsidiaries:** Subsidiaries whose ownership interests are entirely controlled or wholly owned, directly or indirectly, by an entity exempt under 501(c) (e.g., a single-member LLC with a 501(c) exempt parent), regardless of whether they are exempt themselves; and
- **Joint Ventures of 501(c) Organizations:** Non-exempt entities that are owned by more than one organization exempt under Code Section 501(c) are exempt from the CTA reporting.

Notably, simply being incorporated as a nonprofit, or having a nonprofit as a co-owner, without more, does not automatically qualify an organization for the CTA exemption. Nonprofits should be aware of the following less common situations which can create reporting requirements:

- **Mixed Ownership Joint Ventures.** Entities which are owned by a combination of one or more 501(c) exempt entities and even one non-exempt entity are subject to the CTA reporting requirements.
- **Homeowners Associations (HOA).** Generally, there are two options for federal income tax exemption for HOAs, but only one category is exempt from the CTA reporting. HOAs exempt

from taxation under Code Section 501(c)(4) are exempt from the CTA reporting. However, HOAs (including condominium management associations, residential real estate management associations and timeshare associations) exempt under Code Section 528 are not exempt and must file annual CTA reports.

- **Non-Exempt Economic Development Organizations.** In New York, many organizations that are involved in local economic development activities are formed as not-for-profit corporations. Some of these organizations may be exempt from income tax under 501(c) and thus eligible for the CTA exemption on that basis, while others may be exempt under the governmental exemption (which is not discussed in this update). However, all such organizations should review the CTA carefully to confirm whether they are eligible for an exemption or subject to reporting requirements.
- **Organizations That Have Had Their 501(c) Exemption Revoked:** If an organization has its tax-exempt status revoked by the IRS, it will have **180 days from the date of revocation** to comply with the CTA. If the organization's tax-exempt status is not reinstated within that 180-day period (which is often the case), then it will need to comply with the CTA's reporting requirements.
- **Newly Formed 501(c)(3) Organizations:** The CTA's language is somewhat ambiguous, but many practitioners are taking the view that newly-formed 501(c)(3) organizations are CTA-exempt even if they have not yet been recognized as tax-exempt by the IRS. A detailed discussion of this subject is beyond the scope of this update. However, if an organization takes the view that it is not CTA-exempt until it is recognized as tax-exempt by the IRS, it would be required to file a CTA report within 90 days of its formation. Once the IRS tax-exemption determination letter is received, the organization should then file an updated report with FinCEN within 30 days indicating that it obtained tax-exempt status and is newly-exempt from the reporting requirements.

The foregoing is a summary of some of the major CTA considerations for tax-exempt organizations and is not intended as legal advice. The consequences of violating the CTA are serious – including both civil and criminal penalties – and thus all organizations should be acting now to confirm whether they are subject to the CTA reporting requirements. If you have any questions or concerns related to the CTA's impact on nonprofits or any other matters concerning the CTA or nonprofits, please contact [Thomas W. Simcoe](#), [Paul J. Avery](#), [Delaney M. R. Knapp](#), [Thomas R. Clifford](#) or the attorney at the firm with whom you are regularly in contact.

